In the Supreme Court of the United States

OCTOBER TERM, 1974

No. 74-784

HOWARD G. REAMER, PETITIONER

v.

GEORGE BEALL, ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

MEMORANDUM FOR THE RESPONDENTS IN OPPOSITION

On November 1, 1974, petitioner was found in civil contempt by the United States District Court for the District of Maryland for failure to comply with a grand jury subpoena *duces tecum* requiring production of all relevant records of a professional corporation of which he is the sole shareholder and director. The district court ordered petitioner to be incarcerated pursuant to 28 U.S.C. 1826 (Pet. App. F). The court of appeals affirmed (Pet. App. A).[1] Petitioner contends here that his Fifth Amendment privilege against self-incrimination justified his noncompliance with the grand jury subpoena.

On September 12, 1974, a federal grand jury issued a subpoena *duces tecum* to petitioner ordering him to appear before it and to produce "all records of every kind and des-

[1]The district court's order has been stayed pending consideration of the petition for a writ of certiorari.

cription pertaining to all checking accounts of Howard G. Reamer, Chartered, including but not limited to, original checks, check stubs, deposit slips, bank statements, accounts receivable ledgers and accounts payable ledgers for the past five years and, further, all case files of every kind and description and all documents connected therewith concerning claims against insured persons and insurance companies in which Howard G. Reamer, Chartered, was in any way concerned during the past five years" (Pet. App. C, pp. 3a-4a). On September 27, 1974, petitioner sought to quash the subpoena on the grounds that it violated both his Fifth Amendment right against compulsory self-incrimination and the attorney-client privilege. On October 23, 1974, the government agreed to withdraw that part of the subpoena requiring the production of materials arguably protected by an attorney-client privilege. The district court rejected petitioner's Fifth Amendment claim.

Thereafter, the grand jury issued a new subpoena *duces tecum* requiring petitioner to produce "all records of every kind and description pertaining to all checking accounts of Howard G. Reamer, Chartered, including, but not limited to, original checks, check stubs, deposit slips, bank statements, accounts receivable ledgers and accounts payable ledgers for the past five years" (Pet. App. G, p. 10a). Petitioner failed to comply with the subpoena. The government thereupon filed a motion on October 30, 1974, to show cause why petitioner should not be held in contempt. On November 1, 1974, the district court, relying on *Bellis* v. *United States*, 417 U.S. 85, held that the requested materials were not privileged under the Fifth Amendment and found petitioner in contempt. The court of appeals affirmed.

Petitioner's contention here—that the records of his professional corporation are privileged from production under the Fifth Amendment—is without merit. It has long been held that the privilege against self-incrimination does not extend to corporate records held in a representative capacity. See, *e.g.*, *Wilson* v. *United States*, 221 U.S. 361; *Dreier* v. *United States*, 221 U.S. 394; *Wheeler* v. *United States*, 226 U.S. 478. This rule applies without regard to the size of the corporation, and indeed has been applied by this Court to the records of a corporation having only a single stockholder. *Grant* v. *United States*, 227 U.S. 74, 76-77. As this Court observed in *Bellis* v. *United States*, *supra*, 417 U.S. at 100, "no privilege can be claimed by the custodian of corporate records, regardless of how small the corporation may be."

Petitioner attempts to distinguish *Bellis* and earlier decisions on the ground that a professional corporation "lacks the requisite characteristics of a corporation for it to be considered as a corporation for anything other than tax purposes" (Pet. 7). This contention is, however, beside the point. *Bellis* itself involved the records not of a corporation but of a small partnership. Moreover, many similar decisions of this Court have involved records of unincorporated associations. See, *e.g.*, *United States* v. *White*, 322 U.S. 694; *United States* v. *Fleischman*, 339 U.S. 349; *Rogers* v. *United States*, 340 U.S. 367.

Petitioner's professional corporation is a separate legal entity organized under and recognized by state law, and as such it is subject to state regulation. See Maryland Professional Service Corporation Act, Md. Annot. Code, Art. 23, §430, *et seq.* Accordingly, its "records do not contain the requisite element of privacy or confidentiality essential for the privilege to attach." *Bellis* v. *United States*,

supra, 417 U.S. at 92. This is true regardless of the fact that the corporation is owned by a single shareholder who organized it principally for his own federal income tax purposes; by choosing to do business in corporate form, petitioner relinquished his personal privacy interests in the records of the business. *Grant* v. *United States, supra; Wild* v. *Brewer,* 329 F.2d 924 (C.A. 9), certiorari denied, 379 U.S. 914; *Hair Industry, Ltd.* v. *United States,* 340 F.2d 510 (C.A. 2), certiorari denied, 381 U.S. 950.

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

ROBERT H. BORK,
Solicitor General.

FEBRUARY 1975.